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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by International-Lawyers.Org, International Organization for the Elimination of All Forms of Racial Discrimination, Union of Arab Jurists, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Climate change and Right to Health

2015 was a seminal year for international action on climate change and health. Both the SDGs adopted at the UNGA (September 2015), and the Paris Agreement on climate change, adopted at COP21 in December 2015 under the UN Framework Convention on Climate Change (UNFCCC), contain links not only to the relationship between health and climate change, but the latter, abet in its preamble, contains a reference to "the right to health." In addition, the Third Financing for Development Conference (FFD3) mentions both health and climate change more than a dozen times in the Addis Abba Agenda.

Although we welcome SDGs 3 and 13 on health and climate change respectively and their accompanying targets, we note that there is no mention of the right to health, despite the fact that the NGO/DPI Conference in August/September 2014 identified this as a serious deficiency. SDG 13 on climate change merely defers to the action it was hoped would be taken in Paris. The SDGs, therefore, although valuable guidance and in some cases reflecting a human rights approach, were disappointingly lacking as a contribution to help address the very serious health consequences of climate change.

Equally, the Addis Abba Agenda (AAA) agreed at FFD3 contains no concrete pledge of new and additional financial resources to address the health consequences of climate change. This is despite the clear obligation of developed States to provide new and additional financial resources to developing States found in article 4(3) of the UNFCCC. The AAA does recognize "that increases in global temperature, sea level rise, ocean acidification, and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries including many least developed countries and small island developing States, while extreme climate events endanger the lives and livelihoods of millions" (para. 65). Despite this recognition no concrete pledges were made.

The Paris Agreement contains language on human rights, and particularly the right to health. This language, however, appears in the non-operative preamble of the Agreement. We had hoped that human rights, the right to development, the rights of indigenous peoples, and the right to health would be reaffirmed as legally binding obligations of States in the operative paragraphs and a commitment to protecting people from the unavoidable consequences of climate change. Instead there is a vague provision on loss and damage in article 8, and shameful disclaimer in the COP21 Decision in paragraph 52 that attempts to extinguish the rights of future generations. Such a provision is inconsistent with international human rights law. Even financing, capacity-building, and access to technology were not agreed. As if to add insult to injury the Paris COP by changing a substantive obligation to an aspiration and claiming it was a merely technical revision. How could this happen? One reason, regretfully, was that civil society and much of international society that participated in the UNFCCC processes were excluded from key processes. COP21 lacked transparency and inclusiveness. The exclusion was so significant that a Council mandate holder noted that "important climate treaty is being negotiated largely behind closed doors and without adequate openness and transparency" inconsistent with articles 19 (freedom to impart and receive information) and 25 (right to participate in one's government) of the International Covenant on Civil and Political Rights.[1] Regrettably the Special Rapporteur on human rights and the environment, who had highlighted the participatory rights that citizens enjoy according to Europe's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,[2] remained silent. As consequence, the Paris Agreement that was rapidly pushed through at COP21 creates more problems than it resolves for ensuring respect for human rights.

During 2015 WHO also considered health and climate change as an agenda item during the 136th meeting of its Executive Board in January 2015. At this meeting, however, the item of health and climate change was suspiciously removed from the World Health Assembly's agenda. This happened through the alleged adoption of a WHO Workplan on health and climate change that allowed the removal of the agenda item of health and climate change from the agenda of the 68th World Health Assembly in May 2015 despite the fact that no Workplan on health and climate change was

[1] Statement by Mr. Alfred de Zayas, United Nations Independent Expert on the Promotion of a Democratic and Equitable International Order, entitled "COP21 and the future of humanity," issued on 17 December 2015.

[2] 2161 *UNTS* 447 (1998).

presented, but only "elements of a Workplan".[3] Mistakenly, these were adopted as a Workplan. Again this year in the just past 138th meeting of the WHO Executive Board health and climate change did not appear on the agenda. Fortunately, several States indicated that the 69th WHA agenda should include health and climate change. The Council's own Council's Special Rapporteur on the right to the highest attainable standard of mental and physical health could ensure that the topics of the right to health and climate change are considered.[4]

Finally, this Council itself considered human rights and climate change during its 28th Regular Session in March 2015 holding a full-day panel on the topic. At this panel both a States and civil society called on the Council to take the more effective action of creating the post of Special Rapporteur on human rights and climate change. This echoed the call made by several Ministers in March 2013 during the High Level Segment of the Human Rights Council and civil society and Council's Social Forum in 2010. Still just a few States have prevented effective action. Again this year, as the shorter panel indicates, the Council will continue to discuss human rights and climate change, but will not take effective action.

The Facts on the Ground

Nature does not wait for political processes. Our members in Egypt, in Palestine, in Nigeria, in Vanuatu and in Sierra Leone have seen the deadly effects of climate change already. The increased desertification and the inability to produce food leading to malnutrition and starvation; the drying up of wells and rivers leading to dehydration; flooding leading to increased transmission of waterborne diseases; increased burdens of disease due to temperature rises with exposure to animals that give rise to diseases[5] such as Malaria, Ziki fever, bird flu, yellow fever, cholera, Ebola, the plague, tuberculosis, dengue, diarrhea, etc. These adverse effects of climate change were not a surprise. In its *Fourth Assessment Report* in 2007 the International Panel on Climate Change (IPCC) had already warned us that inhumane and often deadly adverse effects of climate change are "likely" to occur.[6] In its *Fifth Assessment Report* in 2015, the IPCC states further that the "[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia."[7] As a consequence the IPCC states that it is now "extremely likely" that the worst adverse consequences will occur.[8] Climate scientist James Hanson and his colleagues not only concurred, but in 2015 warned us that it is too late to prevent much of the predicted harm.[9] And in a study on environment and health in Africa, WHO estimated that more than 154 million Africans would perish from adverse environmental impacts in the rest of this century.[10]

We cannot plead ignorance. We know what is happening. Already at COP15 G77-Coordinator Lumumba Daping pleaded with the international community not to forsake hundreds of millions of people by its failure to take adequate action. At COP21 this warning was again ignored.

Now is the Time to Act

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[3] *See* WHO Doc. EB136/16.

[4] In accordance with the WHO Constitution and Rules 5(e) and/or (f) Rules of Procedure of the World Health Assembly.

[5] *See* Wildlife Conservation Society, "The Deadly Dozen: Wildlife Diseases in the Age of Climate Change" (7 October 2008), and Campbell-Lendrum, D., and Woodruff, R., "Comparative Risk Assessment of the Burden of Disease from Climate Change," 114(12) *Environmental Health Perspectives* 1935 (December 2006).

[6] *See generally*, IPCC, *Climate Change 2007(Fourth Assessment Report)* (2007).

[7] *Id.* at 2.

[8] *Id.* at 47.

[9] Hansen, J., Sato, M., Hearty, P., Ruedy, R., Kelley, M., Masson-Delmotte, V., Russell, G., Tselioudis, G., Cao, J., Rignot, E., Velicogna, I., Kandiano, E., Schuckmann, K. von, Kharecha P., Legrande, A.N., Bauer, M., and Lo, K.W., "Ice melt, sea level rise and superstorms: evidence from paleoclimate data, climate modeling, and modern observations that 2°C global warming is highly dangerous," 15 *Atmos. Chem. Phys. Discuss.* 20059–20179 (2015).

[10] World Health Organization, *Preventing disease through healthy environments*, (2006), (Table A2.3: Deaths attributable to environmental factors, by disease and mortality stratum for WHO regions in 2004, updated data for 2004, listing 1,544,000 deaths per year attributable to environmental risk factors in Africa).

While the *de minimus* efforts in 2015 have done little to help us achieve adequate action, they do not mean that we cannot take more adequate action than we have been encouraged to take. If there is any forum where this can start, it is the Human Rights Council.

Almost forty years ago, the Alma Ata Declaration, adopted under the auspices of the World Health Organization, called for health for all and for the recognition of health as a human right. The Universal Declaration of Human Rights in 1948 and International Covenant of Economic, Social, and Cultural Rights contain this human right. The Alma Ata Declaration while merely reiterating legal commitments that States had undertaken in a treaty and under customary international law was also an expression of extraordinary political will that reiterated the commitment of all the international community to strive for the right to health.

These duties require action. As first steps, we, can

1. Call on all States to publicly pledge that they will take all necessary action to protect the health of all of their people from the adverse consequences of climate change.
2. Call on the Human Rights Council to urgently create the post of Special Rapporteur on human rights and climate change.
3. Call on the Council's Special Rapporteur on the right to the highest attainable standard of mental and physical health to exercise the prerogative of the United Nations as allowed by the WHO's Constitution and WHA Rules, to place on the agenda of the WHA the "The right to health" with a view towards adopting a WHA resolution on the right to health.

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The Brussells Tribunal, Arab Lawyers Association- UK, Geneva International Centre for Justice (GICJ), Association of Humanitarian Lawyers (AHL), The International League of Iraqi Academics (ILIA), The Iraqi Commission on Human Rights (ICHR), Women Will Association (WWA), Organization for Widows and Orphans (OWO), Ikraam Center for Human Rights, Belgian Peace Movement, Ligue camerounaise des droits de l'homme, International Coalition against War Criminals (ICAWC), Medical Aid for the Third World, Association of Iraqi Diplomats (AID), General Federation of Iraqi Women (GFIW), Association of Iraqi Intellectuals and Academics, The International Network of Arab Human Rights NGOs, The Perdana Global Peace Foundation, Kuala Lumpur Foundation to Criminalise War, Spanish Campaign against the Occupation and for Iraq Sovereignty- CEOSI, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, Human Rights Defenders in Iraq (AHRDI), Centre for Human Rights and Democracy, The Iraqi Centre for Human Rights, Association, Organisation for Justice & Democracy in Iraq (OJDI), NGOs without consultative status, also share the views expressed in this statement.